

ZB# 05-58

Cumberland Farms

37-1-53

05-58

CUMBERLAND FARMS (AREA)
RT. 94 & CAESAR'S LANE (37-1-2)

ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR
555 UNION AVENUE
NEW WINDSOR, N.Y. 12553
Granted 10-24-06

NEW WINDSOR ZONING BOARD OF APPEALS

SBL: 37-1-53

In the Matter of the Application of

CUMBERLAND FARMS

**MEMORANDUM OF
DECISION GRANTING**

AREA

CASE #05-58

WHEREAS, Richard Olsen of McCabe & Mack Attorneys represented the , owner(s) of 401 Blooming Grove Turnpike, New Windsor, New York, 12553, has made application before the Zoning Board of Appeals for a/an Request for variance from Section 300-73(B)(3) which limits extensions of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint (1,590 s.f. to 3,600 s.f.) at Corner of Caesar's Lane & Rt. 94 in a PO Zone (37-1-53)

WHEREAS, a public hearing was held on October 24, 2005 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared on behalf of this Application; and

WHEREAS, there were four spectators appearing at the public hearing; and

WHEREAS, four people spoke in opposition to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Times Herald Record, also as required by law.
2. The Evidence presented by the Applicant showed that:
 - (a) The property is a commercial property located in a mixed neighborhood of commercial and residential properties on a busy state highway.
 - (b) The property is currently improved by a convenient store and gas station. The applicant seeks to remove the existing store and gas station and reconstruct a store and gas station with a different configuration.

- (c) If the variance is approved, it will be subject to site review by the Planning Board.
- (d) The applicant has agreed to install a security fence around the portions of the property not bordered by roadways, although the exact location of the fence will be as determined by the Planning Board during the site plan review process.
- (e) The existing use of the property is a pre-existing, non-conforming use. In improving the property, the applicant seeks a 126% extension of the pre-existing, non-conforming use.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The requested variance(s) will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
2. There is no other feasible method available to the Applicant that can produce the benefits sought.
3. The variance(s) requested is/are substantial in relation to the Town regulations but, nevertheless, are warranted.
4. The requested variance(s) will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
5. The difficulty the Applicant faces in conforming to the bulk regulations is/are self-created but, nevertheless, should be allowed.
6. The benefit to the Applicant, if the requested variance(s) is/are granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community.
7. The requested variance(s) are/is appropriate and are/is the minimum variance(s) necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local Law and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
8. The interests of justice will be served by allowing the granting of the requested area variance(s) provided the applicant installs a security fence bordering the south and west portions of the property (those portions not on a roadway). The exact location of such fence to be determined by the Planning Board.

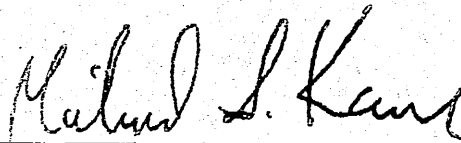
NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for a Request for variance from Section 300-73(B)(3) which limits extensions of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint (1,590 s.f. to 3,600 s.f.) at Corner of Caesar's Lane & Rt. 94 in a PO Zone (37-1-53) as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and/or Building Inspector and Applicant.

Dated: October 24, 2005

A handwritten signature in cursive script, reading "Michael S. Kears", is written over a horizontal line.

Chairman



Town of New Windsor

**555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4615
Fax: (845) 563-4689**

OFFICE OF THE ZONING BOARD OF APPEALS

March 27, 2006

McCabe & Mack LLP
P.O. Box 509
Poughkeepsie, NY 12602-0509

ATTN: RICHARD OLSON, ESQ.

SUBJECT: REQUEST FOR VARIANCE #05-58

Dear Richard:

Please find enclosed two copies of the Formal Decision for your case before the Zoning Board of Appeals. Please keep these copies in your records for future reference if needed.

If you are in need of any further assistance or have any questions in this matter, please feel free to contact me at the above number.

Very truly yours,

Myra Mason, Secretary to the
NEW WINDSOR ZONING BOARD

MLM:mlm

cc: Michael Babcock, Building Inspector

**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
OFFICE
845-563-4615**

MEMORANDUM

TO: LARRY REIS, COMPTROLLER
FROM: MYRA MASON, SECRETARY TO THE ZONING BOARD
DATE: JANUARY 11, 2006
SUBJECT: ESCROW REFUND

**PLEASE ISSUE A CHECK IN THE AMOUNT OF \$ 279.84 TO CLOSE OUT
ESCROW FOR:**

ZBA FILE #05-58

NAME & ADDRESS:

**Cumberland Farms, Inc.
777 Dedham Street
Canton, MA 02021**

THANK YOU,

MYRA

L.R.01-11-2005



**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
RECORD OF CHARGES & PAYMENTS**



FILE #05-58 TYPE: AREA TELEPHONE: 781-828-4900

APPLICANT:
Cumberland Farms, Inc.
777 Dedham Street
Canton, MA 02021

| | | |
|----------------|-----------|----------------------|
| RESIDENTIAL: | \$ 50.00 | CHECK # _____ |
| COMMERCIAL | \$ 150.00 | CHECK # <u>30825</u> |
| INTERPRETATION | \$ 150.00 | CHECK # _____ |

ESCROW: COMMERCIAL \$500.00 CHECK # 30826



| <u>DISBURSEMENTS:</u> | | <u>MINUTES</u> | <u>ATTORNEY</u> |
|-----------------------|--|----------------------|-----------------|
| | | <u>\$5.50 / PAGE</u> | <u>FEE</u> |

| | | | | |
|------------------------------|------------|-------|------------------|------------------|
| PRELIMINARY: | <u>7</u> | PAGES | <u>\$ 38.50</u> | <u>\$ 35.00</u> |
| 2 ND PRELIMINARY: | <u> </u> | PAGES | <u>\$ </u> | <u>\$ </u> |
| PUBLIC HEARING: | <u>11</u> | PAGES | <u>\$ 60.50</u> | <u>\$ 35.00</u> |
| PUBLIC HEARING: | <u> </u> | PAGES | <u>\$ </u> | <u>\$ </u> |

LEGAL AD: Publish Date: 10/13/05 \$ 51.16

| | | |
|--------|-----------------|-----------------|
| TOTAL: | <u>\$150.16</u> | <u>\$ 70.00</u> |
|--------|-----------------|-----------------|



ESCROW POSTED: \$ 500.00
LESS: DISBURSEMENTS: \$ 220.16

AMOUNT DUE: \$

REFUND DUE: \$ 279.84

Cc:

L.R. 01-11-06

CUMBERLAND_FARMS_(05-58)

MR. KANE: Request for variance from Section 300-73(B)(3) which limits extensions of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint at corner of Caesar's Lane & Rt. 94.

MR. OLSEN: My name is Richard Olsen from the law firm of McCabe & Mack and this is Don Vandergin (phonetic), the regional manager from Cumberland and Bob Spiac (phonetic) is the design engineer with Bohler Engineering. Mr. Chairman, just for some procedural matters to get out of the way when we were also last were here your counsel had asked me to provide for the board's ability to hear this application I believe I did that I think Mr. Krieger is satisfied with that. We had a subsequent conversation with regard to the standard that will be applied to this which I believe we have now come to a determination that the area variance standards under 267 (B)(3) are the applicable standards for this application. I will summarize.

MR. KANE: Okay, we'll change it around a little bit. At this point, I will open it up to the public, give a quick summary to these guys and if they have any questions, we can get them asked. When you ask your questions, I would like you to give your name and address, speak loud enough for this young lady. Please do not be repetitive. Thank you.

MR. OLSEN: The existing site is owned by Cumberland Farms since 1975. Currently there's a small brick building at the front of the property approximately 1,590 square feet. We have a canopy directly on the property line which has two gas pumps. Under the current standards the planning board would have the ability to grant a 30 percent expansion given the criteria under Section 373 of your code that would allow us to build an approximately 2000 or add 480

square feet to the existing building. When we initially spoke to the engineer, one of the safety concerns that they raised was the fact that our current curb cut is too close to Route 94. Therefore, they said that any site plan is going to require us to move the curb cut towards the rear of the property. Therefore, we couldn't use the existing buildings, so the proposal is to raise and rebuild the entire site. Our proposal is to bring a 3,600 square feet building back so we can make use of the entranceway to bring back 24 feet from the street line the canopy to allow the additional pumps to be placed in there. The reason for the additional size here and major question that was raised by this board at the last hearing was do we fit the criteria of the gasoline stations in other zoning districts within the town. I can tell you and I have for the board a summary of the zoning analysis from your zoning code, the bulk requirements for the AP, C and the NC zones each contain gasoline service station. The only one that we cannot meet in all three of them is actually the front yard setback, we're sitting back 24 feet, your AP zone requires 30, your NC zone requires 40 and your C zone requires 60. As far as the rear yard setback which we view to be more important of the setback issues, your NC zone and AP zone both require 15 feet, we're providing 25 feet. It's your C zone, your design shopping zone that requires a 30 foot setback, again, we're asking for 25. As far as the design of the site, it's being placed back to utilize the new curb cut that they wish, we do recognize the fact that there are residences to the rear, there's a substantial tree buffer which we're going to have to cut into but the buffer is a large part off of our property so we're maintaining trees on our property and obviously we're not touching any trees on the adjoining properties and of course we'll work with the planning board to ensure sufficient landscaping and privacy in the rear of the building. Other than that, we do meet the criteria of the zoning where the use is permitted.

MR. KANE: Okay, questions.

MR. ALDEBO: Louis Aldebo, I'm at 2 Hart Way. I don't know if the town is aware there are a lot of accidents here constantly, I don't think there would be the problem. Most of the problems are coming out over here, I suggest maybe a light here at Caesar's Lane, I don't know if that's possible. Will this be open 24 hours?

MR. VANDERGIN: I don't know that that's been determined. Generally when we do this type of facility we look at that and see if it's a viable option.

MR. ALDERBO: It's a neighborhood, I'm against 24 hours. Bright lights, I don't know how bright the lights are going to be there, you know.

MR. OLSEN: Assuming we get passed this, we'll have to go to the planning board and address issues such as lights, traffic and these are concerns we have to address on any plan we bring forward.

MR. SCOTT: My name is Bill Scott. Looking at that map here, I own the adjoining property which is a laundromat right here, I've been having nothing but problems with vandalism on my building due to the customers going into their building, buying merchandise, coming out, cutting through the alleyway and down the back into the apartment building in the back over here and throwing garbage and vandalizing my building and so forth plus coming out of the store coming down the little embankment right there cutting in front of the laundromat going over to the apartment buildings on the adjoining side, throwing garbage all over the place, nobody gives a damn so I'm basically objecting to the project.

MR. KANE: Next?

MR. KRILL: Miro Krill, M-I-R-O K-R-I-L-L, 2 St. Ann Drive. There's a lot of kids hanging out in the woods behind the Cumberland Farms at nighttime, place stays open until 12, they went from Upskate right down the road, they started hanging out in the Cumberland Farms and same thing it's a high traffic area and come out of my street, St. Ann's diagonally across the street is very tough, lot of accidents there, got to be some kind of like I said traffic light or something.

MR. KANE: I think that's a state road so that would be either the county or state puts lights, that's nothing we would do.

MR. OLSEN: That's State DOT.

MR. KANE: It took them years and years to get a light and 9W. Okay, any other things to ask?

MR. SCOTT: Another thing if this thing did happen to go through I'd like to see the whole perimeter fenced off to avoid going from one end to the other, they want to go into the place, they have to come through the main street and come in, not through the back entrance which would be coming through the back of my property coming right on through.

MR. KANE: Okay, anything else?

MR. SCOTT: Well, I'd like to see, I see you've got a site plan and everything fine but I still unless they can come up with another answer, I don't think it's a good idea at this time, you've got 1, 2, 3, 4, you've got six pumps in there. Like this fella said before all the bright lights in the street, there's accidents, direct traffic flow's exceptionally high, we don't need more traffic flow, if you put a gas station, we don't need it.

MR. KANE: Thank you. Next?

MR. MORALEZ: Juan Morales, 1 St. Ann Drive. Right now they have like speakers like a P.A. system that's real loud, we can hear it two blocks away from the gas station. I'm pretty sure you're going to take care of that because like an antique system with speakers that when they say pump number 3 you can hear it two blocks away.

MR. KANE: I stop there every morning, I know exactly what you're talking about. Go ahead.

MR. BABCOCK: They have volumes on those, I mean, I'm sure if somebody was made aware of that they can take care of that.

MR. KANE: Not really an issue of this particular board. A lot of that stuff is going to go through the planning board.

MR. MORALEZ: But my main concern is about the traffic light, the thing is there's a lot of accidents over there, people coming out of the gas station trying to come in making a turn to Caesar's Lane trying to go into St. Ann Drive and there's a tractor trailer going by.

MR. KANE: At this point, Ceasar's Lane should be a good option for a light there since we've built up so much and have so many people in the area but again nothing that we can address right here.

MR. MORALEZ: All right.

MR. KANE: Any other questions at this point? Okay, I'll close it to the public. Thank you, gentlemen, and bring it back to the board.

MR. OLSEN: If I could, the issues that these gentlemen

raised this evening are all vital issues that need to be addressed, they all are I believe planning board issues. We obviously are seeking to make a major improvement to the property landscaping, I mean, the issues that I've heard about fences, those are all things that we can do.

MR. KANE: I'm very big on the fence coming down between the laundromat and if you can behind where the grass is on that area I think that security is major, I really do.

MR. OLSEN: Assuming that this board grants us the ability to move forward, we can then go to the planning board, these issues, we'll receive those at the planning board application, that's where the specific issues of traffic, the particular layout and the noise issues, any light impacts, security and obviously, I mean, Cumberland isn't going to make this type of investment--

MR. KANE: When we vote, I'm going to be specific about the fence going around.

MR. OLSEN: All right and at that point the planning board would have the final say as to where it goes.

MR. KANE: Correct.

MR. OLSEN: But you would want to see a security fence surrounding the property?

MR. KANE: I go there every day so I can see the problems, I can see the kids cutting through the back and cutting through there and I do believe that it's--

MR. OLSEN: From Cumberland's standpoint once we make that investment we don't want people coming through dropping garbage, it's a substantial investment the company would be making, they want to make sure they

take care of these things.

MR. KANE: Okay, got a couple things to do since I closed the public portion, Myra, how many mailings did we have?

MS. MASON: On October 5, I mailed out 48 envelopes and had one response.

MR. KANE: I have one response, I will read it into the record right now. This is to inform you that I oppose the request for a variance to permit 127 percent increase in the footprint of Caesar's Lane and Route 94 in the Town of New Windsor. My opposition is based on the anticipated increase in traffic at this already busy intersection as well as quality of life issues in residential areas surrounding the town. Very truly yours, Stephen T. Litler, Jr., St. Ann Drive.

MR. SCOTT: You got my name there too, William Scott?

MR. KANE: Yes, sir, the public portion is closed so no more comments please. Thank you. Now the existing curb cut that's all going to be--

MR. OLSEN: The two on Route 94 are not going to change, it's the curb cut on Caesar's Lane which is very close to the Route 94 intersection right now. We have been directed by your town engineer to move that down, that's where we're showing it now subject to whatever revision of course that would appear during the planning board process that is of course the town road and the town has the final option on that.

MR. REIS: Still going to be two ingress egress on 94?

MR. OLSEN: The curb cuts would not be changed whether the planning board decides to limit one for increase egress, that's not yet been decided, planning board obviously would have some indication on that from DOT

and off course it has not gone through the DOT review yet either.

MR. KANE: The pumps that's all going to be a canopy over it?

MR. OLSEN: Yes.

MR. KANE: Illuminated?

MR. OLSEN: There will be illumination, we'll work with the planning board with whatever recessed lighting and whatever wattage is appropriate for planning board determination.

MR. KANE: And I didn't see you don't have any sign variances?

MR. OLSEN: We're using the existing signs.

MR. SPIAC: Yeah, relocate the existing sign on that and there will be some new signage on the building and canopy which is compliant with code.

MR. KANE: Good, okay. Any further questions?

MS. LOCEY: How large of an extension are you requesting, in other words, you could have up to a 30 percent, what percentage are you requesting?

MR. OLSEN: It's 126 percent increase, we're permitted 30 percent through the planning board, as I said, that would give yourself the ability to put 478.6 square feet onto the existing building.

MR. KANE: How big is the building now?

MR. OLSEN: 1,595 square feet.

MR. KANE: And how big is the building that you're

proposing.

MR. OLSEN: It's 3,600 and that figure 127 is what's calculated by your town engineer.

MS. LOCEY: So double.

MR. OLSEN: Yes.

MR. REIS: That's the same proposal and square foot as the preliminary?

MR. SPIAC: Yes.

MR. OLSEN: Right, we had originally come before the planning board for an informal review for approximately 4,000 square foot building which we did reduce down to 36, this is the one we brought in to this board back in December.

MR. SPIAC: The original was 4,200, 4,185.

MR. REIS: If I can make comment the proposed increase in this building is not going to create more vandalism, it will clean up the property, it will make the traffic flow even better. All your comments are very valid and we understand that but the fact that the business exists and will continue to exist, any improvements that they do are going to improve the area, fencing is going to be one of the issues that somebody brought up so we're going to try to make this community friendly as much as we can, all right, all these issues are there now so they're not making these issues, they already exist, okay. With this 127 percent increase economically it would make sense for the owners to create a 2,800 or 3,000 or something that's not quite as large.

MR. OLSEN: Well, we actually ran some of the scenarios of this seeing if we can make the site more compact,

when you start going below 3,000 square feet the economics doesn't work. We looked at 3,200 square foot building and we still need the same setback to go back to the property line in order to make the traffic flow work just because you reduce the size of the building doesn't mean you reduce the depth of it. So obviously it's easier from an operational standpoint, he'll tell you that 3,600 square feet is probably on the small end of these nowadays so from the standpoint of the operations even if we do reduce it we're still looking for the setbacks are the ones that we're really looking at. We have to go back towards the property line in order to make this facility work correctly from a planning standpoint.

MR. KANE: Okay, any other questions?

MR. REIS: You have enough side yard here, not to further debate this or challenge what you're saying, counselor, but if you made the building 90 feet long and 35 foot wide rather than 45 by 80 still have basically square foot and you wouldn't even need a variance?

MR. OLSEN: Well, we need a variance anyway because this is a non-conforming use, anything that we expand above we'd have to come to this board.

MR. KANE: That takes away parking.

MR. OLSEN: From a site layout, it doesn't work, from the parking, the trash enclosures, the ability to fully access.

MR. REIS: All these things have been considered?

MR. OLSEN: Yes.

MR. BABCOCK: The lot is over an acre which is pretty big for the gas stations that we do see that come in

and they're in compliance with all the setbacks with this building, what they're not in compliance with is that the zoning ordinance says that if you remodel your building in a non-conforming zone, you can only expand 30 percent.

MR. KANE: Any other questions? I'll accept a motion. Please remember to include fencing.

MS. GANN: I will offer a motion that we grant Cumberland Farms for their requested variance from Section 300-73 (B) (3) which limits extensions of pre-existing non-conforming use to 30 percent. The applicant is seeking approval from 1,590 square feet to 3,600 square feet at Caesar's Lane at the corner of Caesar's Lane and 94 in a PO zone and also that they're to include the security fence to surround the property.

MR. KANE: On the south side of the building and on the back of the building.

MR. BABCOCK: The back of the building is the south side, Mr. Chairman, the west and south.

MR. KANE: I'm over 50, you know.

MR. BABCOCK: Just so that we're clear.

MR. REIS: Second it.

ROLL CALL

| | |
|-----------|-----|
| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. REIS | AYE |
| MR. KANE | AYE |

MR. KANE: Motion to adjourn.



RESULTS OF Z.B.A. MEETING OF: October 2, 2005

PROJECT: Cumberland Farms ZBA # 05-58
P.B.# _____

USE VARIANCE: _____ NEED: EAF _____ PROXY _____

LEAD AGENCY: M) _____ S) _____ VOTE: A _____ N _____

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____
REIS _____
KANE _____
CARRIED: Y _____ N _____

PUBLIC HEARING: M) _____ S) _____ VOTE: A _____ N _____

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____
REIS _____
KANE _____
CARRIED: Y _____ N _____

NEGATIVE DEC: M) _____ S) _____ VOTE: A _____ N _____

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____
REIS _____
KANE _____
CARRIED: Y _____ N _____

APPROVED: M) _____ S) _____ VOTE: A _____ N _____

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____
REIS _____
KANE _____
CARRIED: Y _____ N _____

ALL VARIANCES - PRELIMINARY APPEARANCE:

SCHEDULE PUBLIC HEARING: M) _____ S) _____ VOTE: A _____ N _____

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____
REIS _____
KANE _____

CARRIED: Y _____ N _____

PUBLIC HEARING: STATEMENT OF MAILING READ INTO MINUTES ✓

VARIANCE APPROVED: M) 6 S) R VOTE: A 5 N 0

GANN A
LOCEY A
BROWN A
~~MCDONALD~~ A
REIS A
KANE A

CARRIED: Y ✓ N _____

Include fence around Bldg. - property (2 sides

TOWN OF NEW WINDSOR ZONING BOARD OF APPEALS

PUBLIC HEARING FOR: Cumberland Farms

DATE: 10-24-05

SIGN-IN SHEET

| | NAME | ADDRESS | PHONE NUMBER |
|-----|--------------|-------------------|--------------|
| 1. | Louis Alvekt | - Hartshorn Way | |
| 2. | Bill Scott | - Owens Lundromet | |
| 3. | Mico Kris | - St. Ann Dr | |
| 4. | Juan Morales | 1 St Ann Dr | |
| 5. | | | |
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October 24, 2005

Town of New Windsor
Zoning Board of Appeals
555 Union Avenue
New Windsor, NY 12553

RE: Appeal No. 05-58

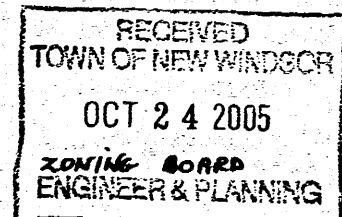
Ladies and Gentlemen:

This is to inform you that I am opposed to the request of Cumberland Farms for a variance to permit a 127% increase in footprint at Ceasers Lane & Rt. 94 in the Town of New Windsor. My opposition is based upon the anticipated increase in traffic at this already busy intersection as well as quality of life issues in the residential areas surrounding the store.

Very truly yours,



Stephen T. Littier, Jr.
7 St. Anne Dr.
New Windsor, NY 12553



PUBLIC HEARING NOTICE
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing on the following Proposition:

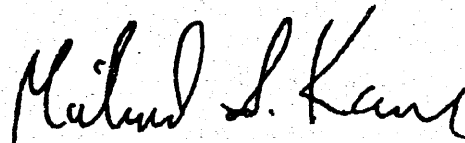
Appeal No. 05-58

Request of CUMBERLAND FARMS

for a VARIANCE of the Zoning Local Law to Permit:

Request for variance from Section 300-73(B)(3) which limits extensions of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint (1,590 s.f. to 3,600 s.f.) at Corner of Caesar's Lane & Rt. 94 in a PO Zone (37-1-53)

PUBLIC HEARING will take place on OCTOBER 24, 2005
at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York
beginning at 7:30 P.M.

A handwritten signature in black ink, appearing to read "Michael S. Kane", written over a horizontal line.

Michael Kane, Chairman

AFFIDAVIT OF MAILING

**ZONING BOARD OF APPEALS: TOWN OF NEW WINDSOR
COUNTY OF ORANGE: STATE OF NEW YORK**

-----X

In the Matter of the Application for Variance of

CUMBERLAND FARMS

**AFFIDAVIT OF
SERVICE
BY MAIL**

#05-58

X

STATE OF NEW YORK)

) SS:

COUNTY OF ORANGE)

MYRA L. MASON, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age and reside at 67 Bethlehem Road, New Windsor, NY 12553.

That on the 5TH day of OCTOBER, 2005, I compared the 48 addressed envelopes containing the Public Hearing Notice pertinent to this case with the certified list provided by the Assessor's Office regarding the above application for a variance and I find that the addresses are identical to the list received. I then placed the envelopes in a U.S. Depository within the Town of New Windsor.

Sworn to before me this

Myra L. Mason

Myra L. Mason, Secretary

11th day of October, 2005

J. J. MacGallagher
Notary Public

JENNIFER MEAD
Notary Public, State Of New York
No. 01ME6050024
Qualified In Orange County
Commission Expires 10/30/ 2006



Town of New Windsor

555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4631
Fax: (845) 563-3101

Assessors Office

September 8, 2005

McCabe & Mack, LLP
ATT: Richard Olson, Esq.
P.O. Box 509
Poughkeepsie, NY 12602

Re: 37-1-53 ZBA#: 05-58 (48)

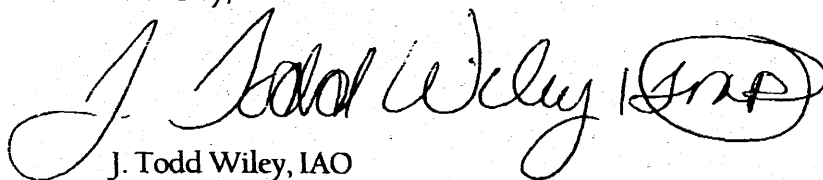
Dear Mr. Olson:

According to our records, the attached list of property owners are within five hundred (500) feet of the above referenced property.

The charge for this service is \$65.00, minus your deposit of \$25.00.

Please remit the balance of \$40.00 to the Town Clerk's Office.

Sincerely,


J. Todd Wilely, IAO
Sole Assessor

JTW/tmp
Attachments

CC: Myra Mason, Zoning Board

37-1-52.1

Qualamar Corp.
P.O. Box 1150
Newburgh, NY 12550

43-1-33

Patricia Camacho
9 St. Anne Drive
New Windsor, NY 12553

43-1-36

James & Doralies Wright
3 St. Anne Drive
New Windsor, NY 12553

43-1-39

Grace Panella
Celia Panella
2 Hearthstone Way
New Windsor, NY 12553

43-1-43

Robert & Andrea Murphy
6 Hearthstone Way
New Windsor, NY 12553

78-2-38

DuWayne Tinsley
Carmen Martinez Tinsley
38 Guernsey Drive
New Windsor, NY 12553

78-2-41

Kevin & Kasey Stanley
44 Guernsey Drive
New Windsor, NY 12553

78-2-44

Freeman & Vanley Hughley
50 Guernsey Drive
New Windsor, NY 12553

78-9-24

Albert & Marion Moo
25 Guernsey Drive
New Windsor, NY 12553

78-11-2

Kelvin Hill
216 Dairy Lane
New Windsor, NY 12553

37-1-52.2

William & Dorothy Scott
8 Cedar Lane
New Windsor, NY 12553

43-1-34

Stephen Littier, Jr.
7 St. Anne Drive
New Windsor, NY 12553

43-1-37

Juan & Luz Morales
1 St. Anne Drive
New Windsor, NY 12553

43-1-40

Robert Kennon
Richard Kennon
66 Drum Hill Road
Wilton, CT 06897

43-1-44

James Ely
8 Hearthstone Way
New Windsor, NY 12553

78-2-39

Sandra Santos
Eddie Thomas
40 Guernsey Drive
New Windsor, NY 12553

78-2-42

Jeffrey Ragni
46 Guernsey Drive
New Windsor, NY 12553

78-2-45

David Anthony Perez
Lourdes Zapata Perez
200 Butterhill Drive
New Windsor, NY 12553

78-9-25

Steven & Carol Radich
27 Guernsey Drive
New Windsor, NY 12553

78-11-15

Kenneth & Susan Curry
21 Guernsey Drive
New Windsor, NY 12553

37-1-54

Forge Hill Gardens Assoc.
c/o Garnet Management, Inc.
333 North Broadway
Jericho, NY 11753

43-1-35

William Wickline
5 St. Anne Drive
New Windsor, NY 12553

43-1-38 & 41

Luis Aldebot
Grace Panella
2 Hearthstone Way
New Windsor, NY 12553

43-1-42

Linda Dineen
4 Hearthstone Way
New Windsor, NY 12553

78-2-37

Joseph & Joyce D'Alo
36 Guernsey Drive
New Windsor, NY 12553

78-2-40

Patricia Lynn & John Koster
42 Guernsey Drive
New Windsor, NY 12553

78-2-43

Wanda Mendillo
48 Guernsey Drive
New Windsor, NY 12553

78-9-23

Raymond & Laura McCormack
223 Dairy Lane
New Windsor, NY 12553

78-11-1

John Curtis
23 Guernsey Drive
New Windsor, NY 12553

80-1-5

Michael Mulligan
207 Butterhill Drive
New Windsor, NY 12553

80-1-6
Shirley Figueroa
Alicia Hernandez
205 Butterhill Drive
New Windsor, NY 12553

80-1-18
Beth & John Hordines, Jr.
96 Guernsey Drive
New Windsor, NY 12553

80-1-38
Victor & Maria Perez
64 Guernsey Drive
New Windsor, NY 12553

80-1-41
Jaime & Mara Perico
58 Guernsey Drive
New Windsor, NY 12553

80-4-1
Brian & Kathleen Doyle
202 Butterhill Drive
New Windsor, NY 12553

80-7-1
David & Michele Steinberg
53 Guernsey Drive
New Windsor, NY 12553

80-1-7
Michael & Karen Pospisil
203 Butterhill Drive
New Windsor, NY 12553

80-1-19
Richard & Lisa Dewsnap
94 Guernsey Drive
New Windsor, NY 12553

80-1-39
Randolph & Peggy Wolfe
62 Guernsey Drive
New Windsor, NY 12553

80-1-42
Alexander & Sharine Perico
56 Guernsey Drive
New Windsor, NY 12553

80-4-2
Peter Stukonis
Margaret Elstob
204 Butterhill Drive
New Windsor, NY 12553

80-7-2
Charlie Rios
51 Guernsey Drive
New Windsor, NY 12553

80-1-17
William & Kathleen Vacca
P.O. Box 4013
New Windsor, NY 12553

80-1-37
Robert & Nora Bush
66 Guernsey Drive
New Windsor, NY 12553

80-1-40
John & Tina Reilly
60 Guernsey Drive
New Windsor, NY 12553

80-1-43
Teresa Albaugh
201 Butterhill Drive
New Windsor, NY 12553

80-4-3
Roy & Cynthia Gutshall
705 Mara Drive
Blue Bell, PA 19422

80-7-9
James Smith
Diane Cassell-Smith
37 Guernsey Drive
New Windsor, NY 12553

Town of New Windsor
ZONING BOARD OF APPEALS
PUBLIC HEARING NOTICE

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing on the following Proposition:

Appeal No. 05-58
 Request of CUMBERLAND FARMS

for a VARIANCE of the Zoning Local Law to Permit:

Request for variance from Section 300-73(B)(3) which limits extensions of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint (1,590 sq. ft. to 3,600 sq. ft.) at Corner of Caesar's Lane & Rt. 94 in a PO Zone (37-1-53)

PUBLIC HEARING will take place on October 24, 2005 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York beginning at 7:30 P.M.

MICHAEL KANE
 CHAIRMAN

Ad Number: 1806907 Advertiser: NEW WINDSOR, TOWN

Phone: 8455634615 Sys No: 1194114 Caller: MYRA

INVOKING CUSTOMER:

Phone: 8455634615 Sys No: 1194114 AcctNo: P.O. No:

Name: NEW WINDSOR, TOWN Subscriber:

Address: ZONING AND PLANNING

555 UNION AVENUE

NEW WINDSOR NY 12553

ORDER:

Printed By: THRFODRNL Date: 10/11/2005 Assigned Sales: TownofNewWindsor PLANNINGBOARD PUBLIC AdType: LINER Order Type: NORMAL

Manual Delay: Box No: Call Back: Y

NOTES:

Change Reason:

INSERTION:

Product: THI Paper: IN Class: 999X; LEGAL BILLING

Schedule: Start Date - 10/13/2005 End Date - 10/13/2005

Sort: TOWN OF NEW WINDSORZONING BOARD OF APPE

PRODUCTION:

Text Size: 2 x 28.00 ProdType: ENTERPRISE ColorNo: 0 Colors:

Tensheets: 1 Proofs: 0 Affidavits: 1 Alt Addr: N

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TIMES HERALD-RECORD

40 Mulberry Street, Middletown, NY 10940

State of New York:

County of Orange: ss:

Patricia Foddrill

Being duly sworn deposes and says that the ORANGE COUNTY PUBLICATIONS Division of Ottaway Newspapers-Radio, Inc. is a corporation organized under the laws of the State of New York and is, at all the times hereinafter mentioned, was the printer and publisher of The Times Herald-Record, a daily newspaper distributed in the Orange, Ulster, Rockland, Dutchess, Pike, PA, Delaware and Sullivan Counties, published in the English language in the City of Middletown, County of Orange, State of New York, that deponent is the

Legal Advertising Rep.

of said The Times Herald-Record acquainted with the facts hereinafter stated, and duly authorized by said Corporation to make this affidavit; that the

Public Notice

a true printed copy of which is hereunto annexed, has been duly and regularly published in the manner required by law in said The Times Herald-Record in each of its issues published upon each of the following dates, to wit: In its issues of

10/13/05

Signature of Representative:

Sworn in before me this

17

Day of

Oct.

2005

Notary Public, Orange County

GRETCHEN PINA BREEDY
NOTARY PUBLIC FOR THE STATE
OF NEW YORK, ORANGE COUNTY
OATH / SIGNATURE IS ON FILE
COMMISSION EXPIRES 11/29/2005



Town of New Windsor

555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4615
Fax: (845) 563-4689

ZONING BOARD OF APPEALS

October 5, 2005

McCabe & Mack LLP
P.O. Box 509
Poughkeepsie, NY 12602-0509

ATTN: RICHARD OLSON, ESQ.

SUBJECT: REQUEST FOR VARIANCE #05-58

Dear Sir:

This is just to let you know your Notices for Public Hearing were mailed out and the notice was also sent to The Times Herald Record Newspaper for publication. **PLEASE NOTE: The charge for publication in the Times Herald Record will be deducted from your escrow that was posted with your application papers.**

Your Public Hearing before the Zoning Board of Appeals for your requested variance at:

Rt. 94 & Caesars Lane
New Windsor, NY

is scheduled for the October 24, 2005 agenda.

This meeting starts at 7:30 p.m. and is held in the Town Meeting Room at Town Hall. If you have any questions or concerns in this matter, please feel free to contact me.

Very truly yours,

Myra Mason, Secretary
Zoning Board of Appeals

MLM:mlm

RESULTS OF Z.B.A. MEETING OF: September 2, 2005

PROJECT: Cumberland Farms ZBA # 05-58

ZBA # 05-58

P.B.#

USE VARIANCE: NEED: EAF PROXY

LEAD AGENCY: M) _____ S) _____ VOTE: A _____ N _____

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____
REIS _____
KANE _____

CARRIED: Y _____ N _____

PUBLIC HEARING: M)_____ **S)**_____ **VOTE: A**____ **N**_____

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____
REIS _____
KANE _____

CARRIED: Y _____ N _____

NEGATIVE DEC: M) S) VOTE: A N

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____ CARRIED: Y _____ N _____
REIS _____
KANE _____

APPROVED: M) S) VOTE: A N

GANN _____
LOCEY _____
BROWN _____
MCDONALD _____ CARRIED: Y _____ N _____
REIS _____
KANE _____

ALL VARIANCES - PRELIMINARY APPEARANCE:

SCHEDULE PUBLIC HEARING: M) L S) G VOTE: A 4 N 0

| | |
|----------|---|
| GANN | A |
| LOCEY | A |
| BROWN | A |
| McDONALD | |
| REIS | A |
| REIS | |

CARRIED: Y ✓ N

PUBLIC HEARING: STATEMENT OF MAILING READ INTO MINUTES

VARIANCE APPROVED: M)___ S)___ VOTE: A___ N___

GANN
LOCEY
BROWN
MC DONALD
REIS
KANE

CARRIED: Y_____N_____.

[illegible]

CUMBERLAND FARMS (05-58)

MR. REIS: Request for variance from Section 300-73 (B)(3) which limits expansion of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint at corner of Caesar's Lane and Route 94.

Richard Olsen, Esq. appeared before the board for this proposal.

MR. OLSEN: Good evening, my name is Rich Olsen from McCabe & Mack, counsel for Cumberland Farms. The proposal that we have presented to your planning board is for a raise and rebuild of the existing Cumberland Farms. There's a small block building in the front of the parcel as we have operated since 1975 along with the canopy that sits right on the front property line. Proposal is to prepare a new construction for a modern store, increase the tank capacity with new tanks, increase the pumping capacity. We have been advised by the Town engineer that because of the current location of the curb cut, we have to move this further down Caesar's Lane because of the safety concerns accessing Route 94. We have done that which does necessitate moving the building further back because of the circulation that we have to get through here. We're going to be on a line with a store that's directly to the west of us, our rear line will be further away from the property line than the store which is to the west of us. We recognize that there's an issue of the fact that there's residences behind us. We have worked to preserve trees. There's an existing significant buffer which will extend up to the rear of the store. Right now, we'll be leaving 30 foot and we'll be working with the planning board for additional screening in here. It's our understanding that under your standard the plan as presented will show the setbacks and you will make the determination as to whether the expansion would be permitted.

MR. REIS: This increase, Mike, falls within the side, rear yards?

MR. BABCOCK: Well--

MR. OLSEN: That as I understand it is the issue, they don't have any rear or side yards for this particular use, it's a non-conforming use in the professional office district, therefore, the proposal as we have presented it will detail the rear and side yards that we're seeking and that if you permit the expansion those will be the maximum rear and side yards, obviously subject to their review as to the layout.

MR. REIS: This is your proposed layout?

MR. OLSEN: Correct.

MR. REIS: How far back is the building from the rear yard?

MR. OLSEN: Building sits approximately here.

MR. REIS: Proposed?

MR. OLSEN: Twenty-five feet off our rear line, there's a mature forest that extends beyond the property line to the residences in the rear.

MR. REIS: That darkened area, not the green, is that wooded?

MR. OLSEN: This is wooded area here, right now this is where we propose to do additional landscaping, this is where the grading is going to have to be for the building, this is wooded, it's a hatched line here but that's on the other property.

MR. REIS: Theoretically, this is a tremendous

increase.

MR. OLSEN: Under your code, we can go to 2,027 square feet.

MR. REIS: 2000?

MR. OLSEN: 2,027 just on the expansion, if we had to stick to the code, 3,600 is basically one of the smaller size stores, they were originally looking at 4,200 which is the new quote unquote standard. Obviously, that would be much more difficult to fit on here, the 3,600 is then the size store that they try to place on these properties, make them economically viable to do the work.

MS. GANN: How many gas pumps?

MR. OLSEN: Two existing and this is six, they're setting the pumps further back, the existing canopy sits right on here, our property line.

MR. REIS: Will the vehicles be pulling in perpendicular to the new store?

MR. OLSEN: Pulling in facing the store so the circulation would hopefully be bringing them out.

MR. REIS: This is not, I'm just curious, the two openings on Route 94, they're still going to exist?

MR. OLSEN: These exist and our, the advice to us was the curb cut on Ceasar's would be changed because the DOT in addition to the Town has been trying to pull the curb cuts further down on the Town roads.

MR. REIS: Your proposed building doesn't conflict with easements, right-of-ways, utilities?

MR. OLSEN: No.

MR. KRIEGER: Mr. Chairman, if I may, one of the things that concerns me legally and it's a concern, it's not a decision either way or I don't have any feelings just a question as to whether or not this is something that's subject to variance under 267?

MR. OLSEN: I raised that issue with your Town engineer who indicated that I believe he'd discuss it with the Town attorney, the procedure followed in this Town has been that the presentation is made as an expansion of the non-conforming use because there are no set setbacks to be used.

MR. KRIEGER: I understand that the planning board engineer is an engineer, I have the honor and obligation of advising this board and I think they expect me to exercise my independent judgment.

MR. OLSEN: We would be happy to make the necessary applications if somebody would tell us what the standards are for the setbacks that we'd need.

MR. KRIEGER: I'm not concerned about the setbacks, I understand that because there are no setbacks for a pre-existing, non-conforming use.

MR. OLSEN: Asking for the standards under 267B?

MR. KRIEGER: Whether it permits the board to vary that.

MR. OLSEN: I had that one time, the question, I believe I have case law on the non-conforming use.

MR. KRIEGER: That's one of the reasons I gave you the card because you can send it directly to me in advance.

MR. OLSEN: Sure, I'd be happy to do that.

MR. KRIEGER: Because I'd like to put any legal concern to bed.

MR. REIS: What's the light area on the left, my left?

MR. OLSEN: This is the underground storage tanks, they're going to be replaced.

MR. REIS: Any questions?

MR. BABCOCK: Mr. Chairman, what we have done in the past is we have asked the applicant to supply us with the information for where a proposed structure like the one permitted so if it's permitted in a C zone or NC zone how far I think they exceed those measurements anyway but I think this board would be, it would help this board in its decision to know that if this was a proper zone since it's non-conforming, does it meet the zoning and the current setbacks, I think the Town of New Windsor came up with a set, with the setbacks because of the use not because of the zone and I think if a gas station is allowed anywhere in the Town of New Windsor it should meet the same criteria as where it's allowed to be.

MR. REIS: Does this proposal meet those requirements?

MR. BABCOCK: I don't have that in front of me but I think it exceeds those but I think it would be to their benefit to show this board that they do meet that criteria for where a gas station would be permitted.

MR. REIS: Thank you, Mike.

MR. BABCOCK: As we know, the gas station down the street that was in here last time the rear yard setback was 15 feet, they're proposing 25 I know that one, the side yard here, the one front yard is 92 feet, the other side yard is 88 feet.

MR. REIS: Seems to be a lot of room.

MR. BABCOCK: Yeah.

MR. OLSEN: Our lot size fortunately we do have a large enough lot to deal with.

MR. REIS: What's the size of the property?

MR. OLSEN: It's an acre, it's 1.05 acres.

MR. REIS: To stay within the code that doesn't exist for this non-conforming use would it be economically feasible for you to do 100 percent rather than 127 percent, would that make sense?

MR. OLSEN: That would be approximately 3,200 square feet, we can explore that.

MR. REIS: I throw that out as a compromise not because it might be necessary just as a thought.

MR. OLSEN: In preparation for the hearing before the board we can go through and do that analysis and then we'd have to talk to the number crunchers in Massachusetts to figure out what works.

MR. REIS: We understand. Any other questions, folks? Can I hear a motion? Mike, wait a minute, is there anything else you can add?

MR. BABCOCK: No.

MS. LOCEY: I'll offer a motion to schedule a public hearing on the application of Cumberland Farms for their request for a variance from Section 300-73(B) (3) which limits extensions of pre-existing non-conforming use to 30 percent while the applicant is seeking approval for 127 percent increase in the footprint at the corner of Caesar's Lane and Route 94 in a PO zone.

September 12, 2005

23

MS. GANN: Second the motion.

ROLL CALL

| | |
|-----------|-----|
| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. REIS | AYE |

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

RECEIPT OF ESCROW RECEIVED:

DATE RECEIVED: 08-30-05

FOR: ESCROW 05-58

FROM:

McCabe & Mack LLP
P.O. Box 509
Poughkeepsie, NY 12602-0509

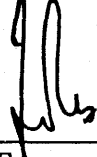
ATTN: RICHARD OLSON, ESQ.

CHECK NUMBER: 30826

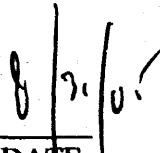
TELEPHONE: 845-486-6896

AMOUNT: 500.00

RECEIVED AT COMPTROLLER'S OFFICE BY:



NAME



DATE

PLEASE RETURN ONE SIGNED COPY TO MYRA FOR FILING

THANK YOU

Town of New Windsor
555 Union Avenue
New Windsor, NY 12553
(845) 563-4611

RECEIPT
#833-2005

08/31/2005

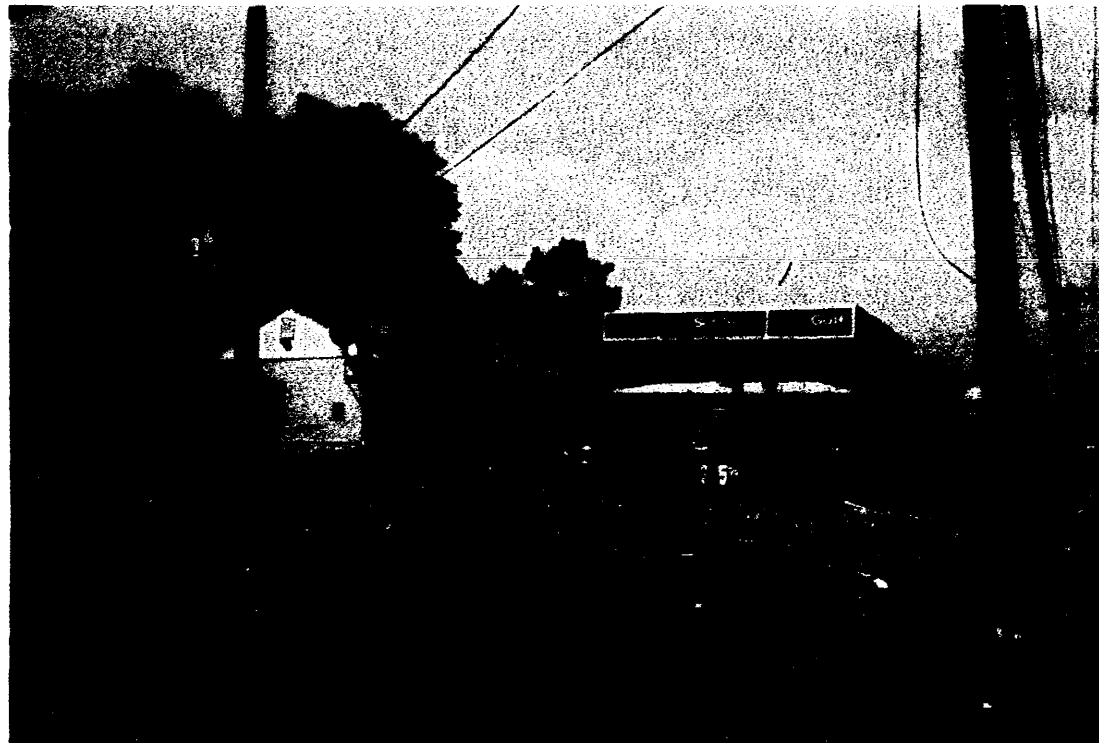
McCabe & Mack LLP *ZBA '05-58*

Received \$ 150.00 for Zoning Board Fees, on 08/31/2005. Thank you for stopping by the Town Clerk's office.

As always, it is our pleasure to serve you.

Deborah Green
Town Clerk

EXHIBIT A

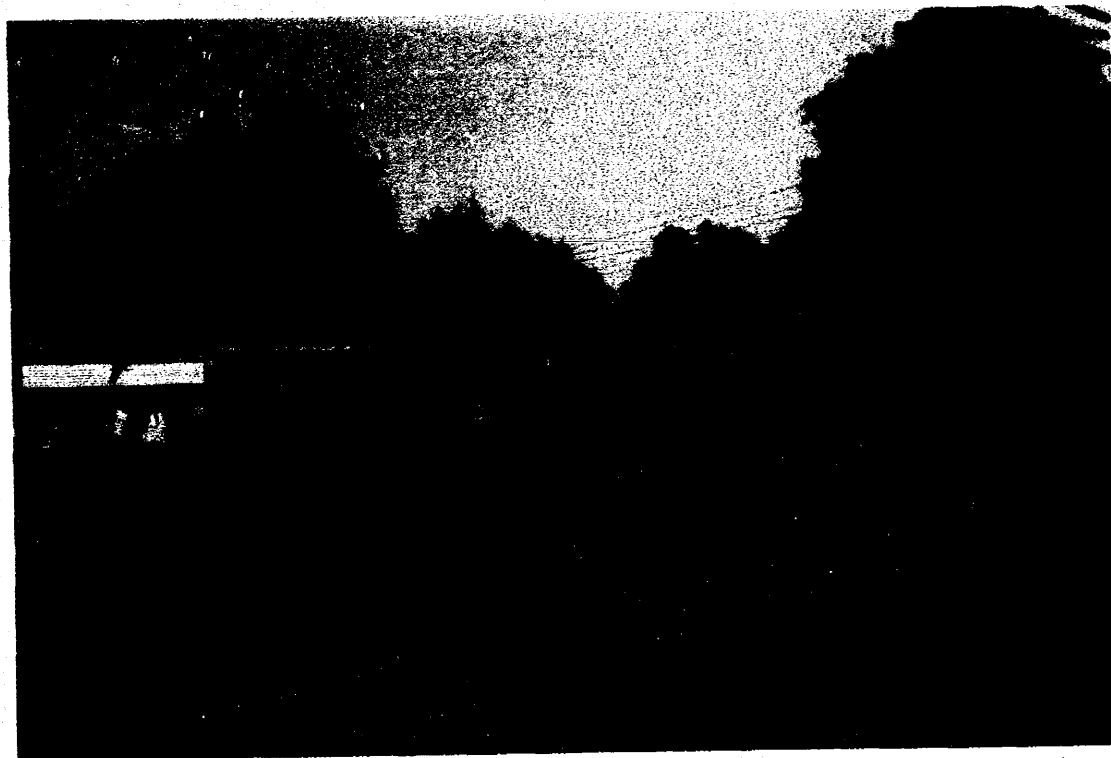


EXISTING SITE



EXISTING SITE

EXHIBIT B



VIEW TO NORTH

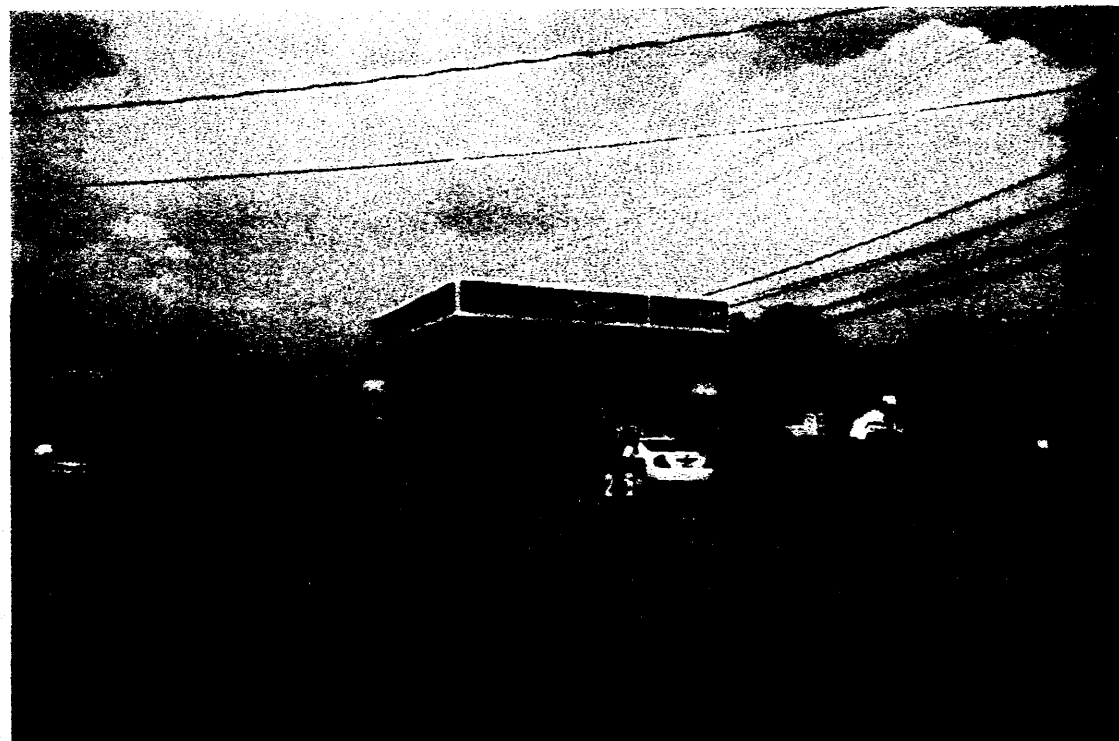


VIEW TO NORTH

EXHIBIT B



VIEW TO WEST

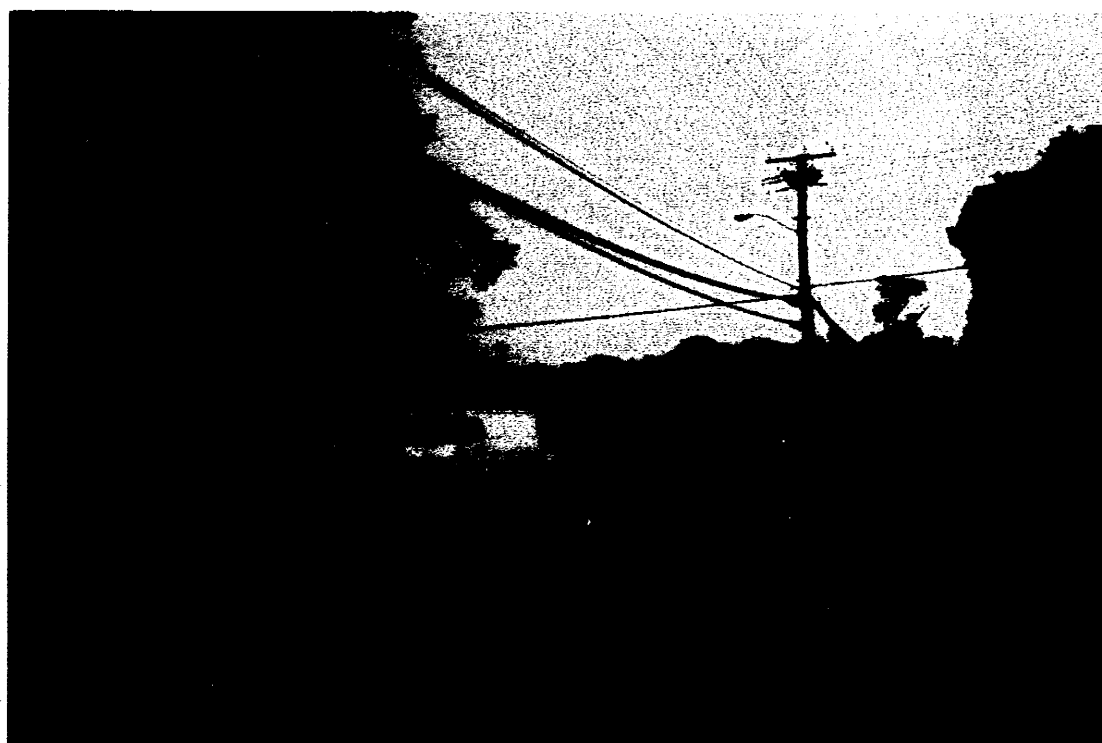


VIEW TO WEST

EXHIBIT B

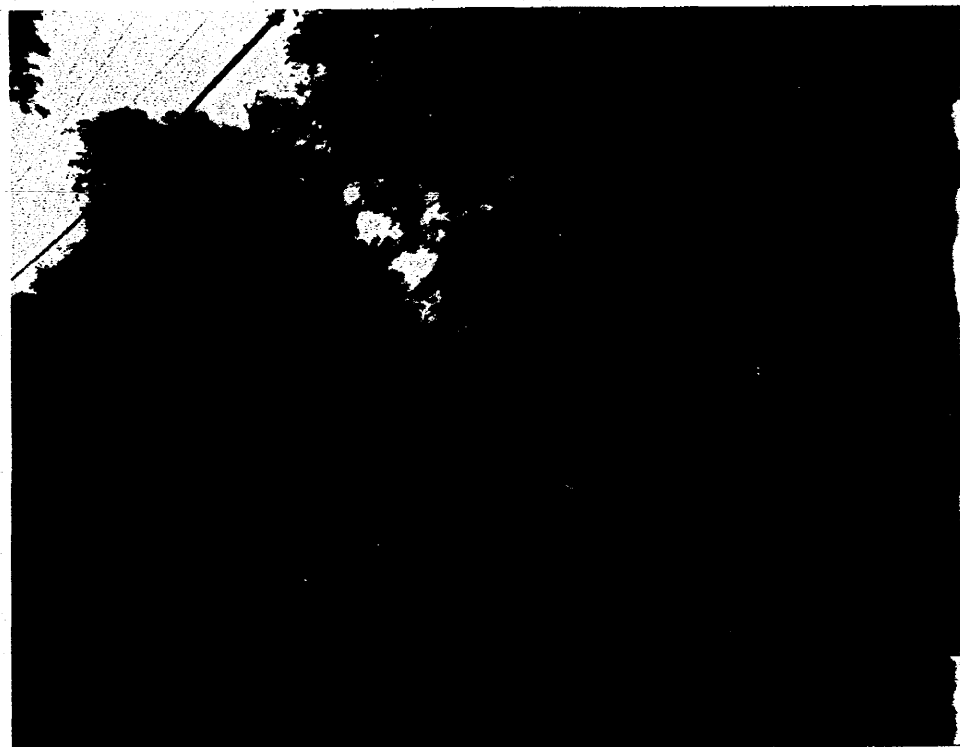


VIEW TO EAST



VIEW TO EAST

EXHIBIT B



VIEW TO SOUTH



VIEW TO SOUTH



Town of New Windsor

**555 Union Avenue
New Windsor, New York 12553**

Telephone: (845) 563-4615

Fax: (845) 563-4689

ZONING BOARD OF APPEALS

August 30, 2005

**McCabe & Mack LLP
P.O. Box 509
Poughkeepsie, NY 12602-0509**

ATTN: RICHARD OLSON, ESQ.

SUBJECT: REQUEST FOR VARIANCE #05-58

Dear Mr. Olson:

This letter is to inform you that you have been placed on the SEPTEMBER 12, 2005 agenda for the Zoning Board of Appeals to discuss your request for a variance at:

**CUMBERLAND FARMS
Rt. 94 & Caesar's Lane
New Windsor, NY**

This meeting starts at 7:30 p.m. and is held in the Town Meeting Room at Town Hall. If you have a problem with this time and/or date, please contact me at the above number and we will reschedule your appearance. If you have any further questions, please feel free to contact me.

Very truly yours,

**Myra Mason, Secretary
Zoning Board of Appeals**

MLM:mlm

**cc: Cumberland Farms, Inc.
777 Dedham Street
Canton, MA 02021**

**OFFICE OF THE PLANNING BOARD
TOWN OF NEW WINDSOR
ORANGE COUNTY, NY**

NOTICE OF DISAPPROVAL OF PLANNING BOARD APPLICATION

PLANNING BOARD FILE NUMBER: 05-25

DATE: 8/30/05

APPLICANT:

Cumberland Farm c/o Richard J. Olson, Esq., 63 Washington St., POB 509, Poughkeepsie

PLEASE TAKE NOTICE THAT YOUR APPLICATION:

DATED: 7/13/05

FOR: SITE PLAN

LOCATED AT: South side NYS Rt. 94 near Caesars Lane

ZONE: PO

DESCRIPTION OF EXISTING SITE: SEC: 37 BLOCK: 1 LOT: 53

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

Variance from Section 300-73 (B)(3) which limits extensions of pre-existing non-conforming use to 30%. Applicant seeks approval for 127% increase in footprint (1590 sf to 3600 sf).

TOWN OF NEW WINDSOR CODE: 300-73(B)(3)

Mark J. Edsall, P.E., P.P.
Mark J. Edsall, P.E., P.P.
Engineer for the Planning Board



**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS**



APPLICATION FOR VARIANCE

8/17/05
Date

Application Type: Use Variance ☐ Area Variance ☒
Sign Variance ☐ Interpretation ☐

I. **Owner Information:** Phone Number: (781) 828-4900
Cumberland Farms, Inc. a/k/a VSH Realty Fax Number: ()
(Name)
777 Dedham Street Canton, MA 02021
(Address)

II. **Applicant:**
same as I. above Phone Number: ()
(Name) Fax Number: ()
(Address)

III. **Forwarding Address, if any, for return of escrow:** Phone Number: ()
same as I. above Fax Number: ()
(Name)
(Address)

IV. **Contractor/Engineer/Architect/Surveyor/:** Phone Number (845) 486-6896
Fax Number: (845) 486-7621
Richard J. Olson, Esq. McCabe & Mack LLP
(Name)
63 Washington Street Poughkeepsie, NY 12601
(Address)

V. **Property Information:**
Zone: PO Property Address in Question: 401 Blooming Grove Turnpike
Lot Size: 46,003 s.f. Tax Map Number: Section 37 Block 1 Lot 53
a. What other zones lie within 500 feet? _____
b. Is pending sale or lease subject to ZBA approval of this Application? no
c. When was property purchased by present owner? 7/16/75
d. Has property been subdivided previously? no If so, When: _____
e. Has an Order to Remedy Violation been issued against the property by the
Building/Zoning/Fire Inspector? None known
f. Is there any outside storage at the property now or is any proposed? no

****PLEASE NOTE:****

**THIS APPLICATION, IF NOT FINALIZED, EXPIRES ONE YEAR FROM THE DATE OF
SUBMITTAL.**

COMPLETE THIS PAGE ☐

**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS**

APPLICATION FOR VARIANCE - continued

VIII. AREA VARIANCE: (This information will be on your Building Department Denial form you receive)

Area Variance requested from New Windsor Zoning Local Law,

| | <u>Requirements</u> | <u>Proposed or Available</u> | <u>Variance Request (1)</u> |
|---------------------|---------------------|------------------------------|-----------------------------|
| Min. Lot Area | 43,560 | 46,003 | |
| Min. Lot Width | 125 | 203.3 | |
| Reqd. Front Yd. | 45 | | |
| Reqd. Side Yd. | 20 | | |
| Reqd. Rear Yd. | 50 | | |
| Reqd. St Front* | | | |
| Max. Bldg. Hgt. | 35 | | |
| Min. Floor Area* | | | |
| Dev. Coverage* | | | |
| Floor Area Ration** | | | |
| Parking Area | | | |

*Residential Districts Only

**Non-Residential Districts Only

(1) This application is for the expansion of an existing non-conforming use and therefore there are no existing bulk standards for the particular use

PLEASE NOTE:

THIS APPLICATION, IF NOT FINALIZED, EXPIRES ONE YEAR FROM THE DATE OF SUBMITTAL.

COMPLETE THIS PAGE ☐

**TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS**

APPLICATION FOR VARIANCE - continued

- IX. In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created.

After reading the above paragraph, please describe why you believe the ZBA should grant your application for an Area Variance:

Please see attached supplement:

PLEASE NOTE:

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COMPLETE THIS PAGE ☐

**SUPPLEMENT TO ZONING BOARD OF APPEALS
CUMBERLAND FARMS**

The applicant, Cumberland Farms, Inc., has owned the existing gasoline station/convenience store location at the intersection of Blooming Grove Turnpike and Caesar's Lane since July 16, 1975. The existing use on the site includes a 1596 sf brick block building housing the convenience store with two gas dispensers and a small canopy located within 4 feet of the front property line on Blooming Grove Turnpike. The structure is outdated and inefficient for operation as a modern convenience store. The facility is located in the Professional Office (PO) zoning district of the Town of New Windsor which does not permit the use and therefore it operates as a legal non conforming use within the Town. Annexed hereto as Exhibit A is a photo array of the existing improvements located on the site.

The existing parcel is in excess of one acre exceeding the bulk requirements for the zoning district thereby providing sufficient lot area for improvements to the site. Directly across the street from this location is a small pharmacy and an abandoned service station; to the west of the facility is a one story mixed use service center including a laundry and wireless service store and further to the west an office building; to the east is a medical office building, and retail services; and to the south directly behind the parcel is a multi family apartment complex. Annexed hereto as Exhibit B is a photo array of the adjoining properties described in this section.

The proposal for this site is to modernize and upgrade the convenience store and gas dispensing facility. The existing block building and gas canopy sit too close to Blooming Grove Turnpike to be utilized as the traffic flow through the site is compressed

into a small area. The existing curb cut on Caesar's Lane also does not meet the requirements for this type of facility being too close to the intersection of Blooming Grove Turnpike. Therefore the applicant would proposed to raze the existing structures and to set the improvements back from the front street lines relocating the entrance on Caesar's Lane to the south to improve access. The proposed improvements include the construction of a new modern 3600 sf Cumberland Farms convenience store and the construction of six MPD dispensers with a full canopy set back twenty feet further than the existing canopy located on the site. The proposal is set forth in a site plan submission currently under review by the Planning Board of the Town of New Windsor, prepared by Bohler Engineering, P.C. dated June 20, 2005, copies of which have been submitted to this Board for its consideration in this review.

There is no established bulk criteria for gasoline stations in the PO zoning district. If the existing bulk regulations applied to a gasoline station the only variances that would be required would be front and rear yard set backs for the canopy and an area coverage variance for the building. Given that there are no applicable standards for the use it is the applicant's understanding that the Board will consider the plan as a whole in relation to the variance of the criteria for expansion of a non conforming use as set forth in Section 300-73 B (3) of the Zoning Code of the Town of New Windsor.

The applicant respectfully requests that this Board grant the proposed expansion based upon the following factors:

- 1). The existing site has been utilized as a gasoline station in excess of thirty years. The market for these type of properties for conversion to permitted uses within the PO zone is limited as evidenced by the abandoned station directly across the street.

The property, as configured, with the small block building at the front of the parcel limits the potential for the redevelopment of the existing structures.

2). The proposed improvements will have a beneficial effect on the area. The proposal is for the construction of a new modern facility replacing an antiquated structure which has needed upgrading for several years. The surrounding area is generally developed with service facilities including a laundry, pharmacy and retail services. The proposed convenience store would provide additional services to the area by enhancing the availability and accessibility of the existing use through the site improvements. While the proposal is for an expansion that will utilize more of the existing parcel, and which will be set back nearer to the adjoining apartment complex, there is a substantial mature tree buffer that exists which will be substantially maintained to shield the uses on Blooming Grove Turnpike from the adjacent residential complex.

3). The proposed extension will not be more incompatible with the character of the neighborhood but will only be an improvement in the existing use both from a visual as well as a functional perspective.

4). In the review of this application the Planning Board will ensure sufficient parking and loading spaces and the realignment of the curb cut on Caesar's lane will improve access and circulation on the site.

5). Finally, the improvements will in no way impede fire or police protective services to the area.

XII. ADDITIONAL COMMENTS:

- (a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning Local Law is fostered. (Trees, landscaped, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)
-
-

XIII. ATTACHMENTS REQUIRED:

- ☐ Copy of contract of sale, lease or franchise agreement. Copy of deed and title policy.
- ☐ Copy of site plan or survey (if available) showing the size and location of the lot, buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
- ☐ Copies of signs with dimensions and location.
- ☐ Three checks: (each payable to the TOWN OF NEW WINDSOR)
 - ☐ One in the amount of \$ 300.00 or 500.00 (escrow)
 - ☐ One in the amount of \$ 50.00 or 150.00 (application fee)
 - ☐ One in the amount of \$ 25.00 (Public Hearing List Deposit)
- ☐ Photographs of existing premises (5 or 6) from several angles. **SUBMITTING DIGITAL PHOTOS PRINTED FROM COMPUTER - PLEASE SUBMIT FOUR (4) SETS OF THE PHOTOS.)**

XIV. AFFIDAVIT.

STATE OF NEW YORK)

) SS.:

COUNTY OF ORANGE)

The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/her information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

Sworn to before me this:

_____ day of _____ 20____,

Signature and Stamp of Notary

See Owner's Consent Attached

Owner's Signature (Notarized)

Owner's Name (Please Print)

[Signature]
Applicant's Signature (if not Owner)

PLEASE NOTE:

THIS APPLICATION, IF NOT FINALIZED, EXPIRES ONE YEAR FROM THE DATE OF SUBMITTAL.

COMPLETE THIS PAGE ☐

AFFIDAVIT OF OWNERSHIP/OWNER'S CONSENT

COMMONWEALTH

STATE OF MASSACHUSETTS)

)ss.:

COUNTY OF NORFOLK

CUMBERLAND FARMS, INC. hereby states that it is the record owner of the real property and improvements located at 401 Blooming Grove Turnpike, Town of New Windsor, County of Orange, State of New York having acquired title to said property by deed dated July 16, 1975 recorded in the Orange County Clerk's Office on November 19, 1975 in Liber 2022, page 1030 and which lands are further identified on the Town of New Windsor Tax Map as Section: 37 Block: 1 Lot: 53

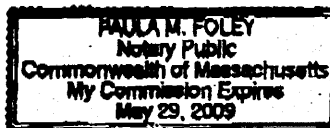
CUMBERLAND FARMS, INC. as the owner/applicant for this property hereby authorizes Richard J. Olson, Esq. of the law firm of McCabe & Mack, LLP to appear on behalf of the corporation and to file any necessary applications with the administrative boards of the Town of New Windsor for the improvements to the location identified above and agrees to be bound by the determinations of the Board.

The corporation's address is 777 Dedham Street, Canton, Massachusetts 02021.


DEVRA BAILIN, Senior Counsel, Real Estate

Sworn to before me this
13th day of July, 2005


Notary Public



PROJECT ID NUMBER

617.20

SEQR

APPENDIX C

STATE ENVIRONMENTAL QUALITY REVIEW

SHORT ENVIRONMENTAL ASSESSMENT FORM

for UNLISTED ACTIONS Only

PART 1 - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

| | |
|---|---|
| 1. APPLICANT / SPONSOR Cumberland Farms | 2. PROJECT NAME Cumberland Farms Site Plan |
| 3. PROJECT LOCATION: New Windsor Municipality | Orange County |
| 4. PRECISE LOCATION: Street Address and Road Intersections, Prominent landmarks etc - or provide map 401 Blooming Grove Turnpike on the south easterly corner of NYS Route 94 and Caesar's Lane | |
| 5. IS PROPOSED ACTION : <input type="checkbox"/> New <input type="checkbox"/> Expansion <input checked="" type="checkbox"/> Modification / alteration | |
| 6. DESCRIBE PROJECT BRIEFLY: Raze and rebuild of existing Cumberland Farms convenience store with gas dispensers to provide for larger store and increase in gas pumping dispensers | |
| 7. AMOUNT OF LAND AFFECTED: Initially 1.05 acres Ultimately 1.05 acres | |
| 8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER RESTRICTIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If no, describe briefly: Expansion of non conforming use | |
| 9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? (Choose as many as apply.) <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park / Forest / Open Space <input type="checkbox"/> Other (describe) | |
| 10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (Federal, State or Local). <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency name and permit / approval: Planning Board site plan approval, NYS DOT | |
| 11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency name and permit / approval: Existing site plan approval | |
| 12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT / APPROVAL REQUIRE MODIFICATION? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant / Sponsor Name _____ Date: 8/17/01 Signature _____ | |

If the action is a Coastal Area, and you are a state agency,
complete the Coastal Assessment Form before proceeding with this assessment

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.
☐ Yes ☐ No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.
☐ Yes ☐ No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other impacts (including changes in use of either quantity or type of energy? Explain briefly:

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)? (If yes, explain briefly:

☐ Yes ☐ No

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS? If yes explain:

☐ Yes ☐ No

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question d of part ii was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

- ☐ Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
- ☐ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse environmental impacts **AND** provide, on attachments as necessary, the reasons supporting this determination.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

IN WITNESS WHEREOF, the 16th day of July, nineteen hundred and seventy-five

BETWEEN ATLANTIC RICHFIELD COMPANY, incorporated in Pennsylvania (known in New York as ATLANTIC RICHFIELD COMPANY INCORPORATED), having its principal office at 100 South Flower Street, Los Angeles, California 90071,

parties of the first part, and
V.S.H. REALTY, INC., a Rhode Island corporation having an office at 777 Dedham Street, Canton, Massachusetts 02021,

party of the second part,

WITNESSETH, that the party of the first part, in consideration of FIFTY-FIVE THOUSAND AND 00/100 (\$55,000.00) Dollars,

has received of the party of the second part

paid by the party of the second part does hereby grant and release unto the party of the second part,

its successors and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND with the buildings and improvements thereon, SITUATE in the Town of New Windsor, County of Orange and State of New York, and more particularly bounded and described as follows:

BEGINNING at the intersection of the center line of Quassaick Avenue (New York State Route #94 and formerly the New Windsor and Blooming Grove Turnpike - 58 feet wide) with the center line of Caesars Lane (33 feet wide); extending thence (1) South 83 degrees 11 minutes 40 seconds West along the center line of Quassaick Avenue 200 feet to a 3/8 inch bolt; thence (2) South 6 degrees 48 minutes 20 seconds East at right angles to course (1) 200 feet to a 2 inch steel pipe; thence (3) North 83 degrees 11 minutes 40 seconds East and parallel to course (1) 274.77 feet to a point; thence (4) North 42 degrees 11 minutes 50 seconds East 74.77 feet to a railroad spike in the center line of the aforesaid Caesars Lane (courses 2, 3 and 4 lying along new division lines of lands now or formerly of The Windsor Building Supplies Company, Inc.); thence (5) North 47 degrees 48 minutes 10 seconds West along the aforesaid center line of Caesars Lane 200 feet to the place of beginning.

UNDER AND SUBJECT to all restrictions and easements of record, local zoning laws and any condition which an accurate and complete survey would disclose.

BEING the same premises which Sibarco Corporation by deed dated June 25, 1975 and recorded in Orange County Clerk's Office on AUGUST 14, 1975 - LIBR 204-Page 1022 granted and conveyed to Atlantic Richfield Company, in fee.

TOGETHER with the appurtenances all the estate and rights of the part y of the first in and to

TO HAVE AND TO HOLD the premises herein granted unto the part y of the second part,
its successors and assigns forever.

AND the party of the first part covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

The grantor, in compliance with Section 13 of the Lien Law, covenants that the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and that the grantor will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

In presence of:

Malcolm

ATLANTIC RICHFIELD COMPANY

By *W. M. Marcussen*
Vice President

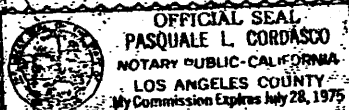
Attest *Thomas J. ...*
Assistant Secretary

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On the 16th day of July 1975 before me came W. M. Marcussen, to me known, who, being by me duly sworn, did depose and say that he resides in Arcadia, California

that he is a Vice President of ATLANTIC RICHFIELD COMPANY the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.



Pasquale L. Cordasco
Notary Public

STATE OF CALIFORNIA
County of Los Angeles

(General)

I, CLARENCE E. CABELL, County Clerk and Clerk of the Superior Court, State of California, County of Los Angeles, at Court of Record, having by law a seal, do hereby certify that

Pasquale L. Cordasco
whose name is subscribed to the attached acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public IN AND FOR LOS ANGELES COUNTY, duly commissioned and sworn, with the principal place of business or employment in said County and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments of writing to be recorded in said State, to take depositions and affidavits, and to administer oaths or affirmations, in any County in this State, and that full faith and credit are and ought to be given to his official acts; that the certificate of such officer is required to be under seal; that the impression of his official seal is not required by law to be on file in the office of the County Clerk; I further certify that I am well acquainted with his handwriting and verily believe that the signature to the attached document is his genuine signature, and further that the attached instrument is executed and/or acknowledged according to the laws of the State of California.

Executed and the seal of said Superior Court affixed at
Los Angeles, California JUL 18 1975 19

CLARENCE E. CABELL
County Clerk and Clerk of the Superior Court
of California, County of Los Angeles.

By *M. A. Raydon* Deputy

76CS25H-CSS 7-74

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